

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
JANUARY 5, 1999**

OATHS OF OFFICE

Municipal Court Judge Ron Gray administered the Oaths of Office to Mayor Carolyn Tomei and Councilors Mary King and Jeff Marshall.

REGULAR SESSION

The one thousand eight hundred and sixth meeting of the Milwaukie City Council was called to order by Mayor Tomei at 6:00 p.m. in the Public Safety Building Community Meeting Room. The following Councilors were present:

Larry Lancaster
Mary King

Jeff Marshall

Also present:

Dan Bartlett,
City Manager

Charlene Richards,
Assistant City Manager

Tim Ramis,
City Attorney

Gary Firestone,
City Attorney

Jan Gehlen,
Finance Director

Jim Brink,
Public Works Director

Paul Roeger,
Civil Engineer

Jack Perry,
Operations Supervisor

PROCLAMATIONS COMMENDATIONS, SPECIAL REPORTS AND AWARDS

Jan Gehlen -- Finance Director

Bartlett introduced Jan Gehlen who began working for the City of Milwaukie on January 4, 1999, as the Finance Director.

CONSENT AGENDA

Councilor Lancaster commended the Police Department and Fleet Services for coming in under budget on the purchase of the police vehicles.

It was moved by Councilor King and seconded by Councilor Marshall to adopt the Consent Agenda that consisted of:

1. City Council minutes of November 30 and December 1, 8, and 14, 1998;
2. Resolution No. 1-1999: A Resolution of the City Council of the City of Milwaukie, Oregon, Designating the Clackamas Review and the Oregonian as Papers of Record for the City of Milwaukie;
3. Police Vehicle Purchase;
4. O.L.C.C. Application for Danny's Meatlocker Pub; and
5. City Acceptance of Lake Road Sidewalk Improvement Project.

Motion passed unanimously among the members present.

AUDIENCE PARTICIPATION

Ed Zumwalt, 10888 SE 29th Avenue. He read a letter into the record regarding concerns several members of the Historic Milwaukie Neighborhood District Association (NDA) had with Y2K problems and dealing with all-encompassing disasters. These concerns included the absence of utilities and water, fuel, emergency shelters, and assistance for seniors, shut-ins, and those living alone. He assured Council that the NDA was willing to help in any way possible.

PUBLIC HEARING

Waverly Drive Local Improvement District Remonstrance Hearing -- Ordinance

Mayor Tomei opened the hearing to consider the formation of a local improvement district (LID) for sanitary sewers on Waverly Drive at 6:12 p.m.

The purpose of the hearing was to consider public comment on the proposed district and to provide the opportunity for property owners to submit oral or written remonstrances. **Mayor Tomei** reviewed the conduct of the hearing.

Staff Report: **Roeger** presented the staff report. After the City Council stated its intent to form the LID on November 17, 1998, staff met with property owners on December 7 to respond to additional questions and concerns. Staff recommended the City's level of participation be 25%. Compensation for easements will be paid for by the water fund and negotiated with individual property owners. Staff further recommended that assessments be on a "per tax lot" basis and that a \$550 incentive be offered for immediate connection to the public system.

Water improvements will be underway in that neighborhood shortly, and staff sees this as an opportunity to reduce disruptions by constructing these sanitary sewer improvements at the same time. The cost of the project is relatively high because the improvements will serve only one side of the street, rock will likely be encountered during excavation, and lots in that area are large. The City will offer financing to property owners for the LID assessment and the systems development charge (SDC).

Staff received one written remonstrance from property owner Steve Blazo 1829 SE St. Andrews Drive, which was included in the packet. Blazo maintained that access to his lots, 202 and 800, was severely limited, and, if he did develop his property, he would take sewer access from 17th Avenue. **Roeger** stated that Blazo would benefit because of the straight access to Waverly Drive. According to the Planning Commission, Blazo would only be allowed to partition his property into two lots. For purposes of this LID, Blazo would be assessed for one lot. Connecting to the sewer lines on 17th Avenue would require considerable work in order to preserve the existing mature trees. Also, draining to 17th Avenue would require a very long run with clean-out holes every 100 feet and would likely involve two separate property owners.

Correspondence: Letter of support from David Worthington, 1620 Waverly Drive, was distributed at the meeting.

Audience Testimony: **Donna Smith**, 1612 SE Waverly Drive, spoke in opposition. She installed new drain fields several years ago and saw no advantage in the proposed improvement. The Waverley Country Club should have to pay its share.

Councilor Marshall asked **Smith** if she had attended the property owners meetings, and Smith replied that she had.

Staff Comments: **Roeger** said the remonstrance percentage was 54.35% based on the Blazo and Smith oppositions.

Audience Testimony: **Charles Lewis**, 1600 SE Waverly. He had attended one of the property owners meetings. Initially, he was opposed to the LID because of the expense, but he had become comfortable with the proposal. He noted the estimated cost to each property owner was \$11,249 in addition to the expense of connecting each house to the lateral. It was important to have some funding options available. In order to preserve the trees on his lot, Lewis said he would probably have to run a line under his existing driveway. He was still uneasy with the variables, including the County Club property, and asked if there would be any recourse if the project came in much higher than estimated.

Roeger indicated the City would not recommend awarding a contract if the bids came in too high. The City would not expose property owners to a much greater cost than estimated, and he mentioned that the City could take a higher percentage of the cost.

Councilor Marshall asked if the individuals had to pay for their own connections from their homes to the main line.

Roeger said that was correct, and the laterals will be on Waverly Drive.

Mayor Tomei added that the City would assist with initial financing.

Bartlett said the method is normally a ten-year term Bancroft with a fixed interest rate in the range of five to six percent.

Councilor Marshall asked Lewis the length of his driveway.

Lewis responded that his driveway was about 160 feet.

Mayor Tomei asked if the County Club was part of the LID.

Roeger confirmed that Waverley County Club was the owner of one lot.

Mayor Tomei closed the public testimony portion of the hearing at 6:35 p.m.

Council Discussion: **Councilor Lancaster** asked if the City could assist property owners with the expense of connecting the houses or help make an arrangement with the contractor.

Roeger said residents are given the name of the City's contractor and have the option of making contact.

Mayor Tomei asked if sewer connection in an urban area was federal law.

Bartlett said the state requires connection within 200 feet of a public sewer, and it is the City's responsibility to provide that line.

Mayor Tomei noted, then, that it is assumed that everyone will eventually be on public sewer service in urbanized areas.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance establishing the Waverly Drive Local Improvement District for sanitary sewer improvements for the first time by title only. Motion passed unanimously among the members present. The ordinance was read for the first time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to read the ordinance establishing the Waverly Drive Local Improvement District for sanitary sewer improvements for the second time by title only. Motion passed unanimously among the members present. The ordinance was read for the second time by title only.

It was moved by Councilor Lancaster and seconded by Councilor King to adopt the ordinance establishing the Waverly Drive Local Improvement District for sanitary sewer improvements. Motion passed unanimously among the members present.

ORDINANCE NO. 1850:

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON,
ESTABLISHING THE WAVERLEY DRIVE LOCAL IMPROVEMENT
DISTRICT FOR SANITARY SEWER IMPROVEMENTS.**

OTHER BUSINESS

Protest of Notice to Abate

Brink presented the staff report. Staff requested the Council take three actions: determine that the unauthorized fill at 12929 SE Rusk Road constituted a nuisance under Milwaukie Municipal Code (MMC) Section 8.04.135; reject the request for a one month's extension; and authorize removal of the unauthorized fill subject to receipt of the appropriate warrant.

Municipal Court Judge Gray determined the fill was in violation of the MMC and Zoning Ordinance on November 18, 1998, and ordered Steinmann to remove it. A majority of the fines would have been suspended if the fill was removed by January 4, 1999. Staff issued a Notice to Abate on December 14, 1998, and Steinmann submitted a written protest on December 28, 1998. A silt fence was installed the week of December 21, but no other noticeable activity had occurred until today, January 5, 1999, at which time staff observed that 50% of the berm had been removed.

Although there have been heavy rains at times, there were opportunities for the property owner to remove the unauthorized fill. Sandbags have been available through Public Works to offset any potential flooding caused by fill removal. The City's plan for removing the fill was approved by the Planning Commission and meets zoning and erosion control requirements. Staff worked with Steve Berliner, Friends of Kellogg and Mt. Scott Creek watersheds, in this process, and he supported the prompt removal of the unauthorized fill.

The berm is in violation of the MMC and the Natural Resource Overlay. The property owner has ten days in which to act from the date of the Council's decision.

Mayor Tomei asked, for clarification, if Steinmann had removed 50% of the berm since Council received the staff report.

Brink responded that about 50% of the earth and concrete was removed during the afternoon of January 4, 1999.

Mayor Tomei asked how long this had been an issue.

Brink replied that the first notice of violation was issued about two years ago.

Councilor Marshall asked if the current work was going on under the City's close supervision.

Perry said that is correct, and the amount of time City employees spend on the project was being tracked.

Councilor Marshall asked if Steinmann had permits to do this work.

Brink responded that Steinmann had filed for an erosion control permit to remove the fill material. He did not apply for a permit for the installation of the material, and two stop work orders had been issued.

Councilor Lancaster asked when the removal work started.

Brink replied the actual excavation started today, but there had apparently been a time delay in scheduling a contractor. About 50% of the work was done in two days.

Staff requested that the City Council determine if the berm was a nuisance so that the City could, after the waiting period, finish the work and file a lien against the property for costs incurred.

Mayor Tomei pointed out that Steinmann came before the City Council on September 15, 1998, and assured the body that he would immediately remove the fill.

Councilor Marshall added that Steinmann never contacted him about his recommendation for a location to dispose of the concrete as discussed at that Council meeting.

Brink noted that the trial was on November 18, 1998.

Councilor King felt Steinmann had ample opportunity to take care of the problem, and she supported the staff recommendation.

It was moved by Councilor King and seconded by Councilor Lancaster to determine that the unauthorized fill at 12929 SE Rusk Road constituted a nuisance; to reject the one month extension; and to authorize removal of the fill subject to receipt of the appropriate warrant.

Councilor Marshall asked if the City could recover its costs.

Firestone referred to the MMC nuisance provisions. The City can recover its costs if Steinmann does not abate, and other fines could be levied under the zoning code. He discussed the proceedings before Judge Gray. The City will not, however, be able to recover the full cost of its involvement.

Brink said the Judge assessed \$14,000 for three violations of which \$12,800 was waived assuming the work would be done by 5:00 p.m. on January 4, 1999.

The City Council directed staff and city attorney to take appropriate action in front of the Judge to get maximum recompense.

Leroyce Massey, 13021 SE Weiko Way, indicated that Brink lead him to believe Steinmann would get a thirty-day extension if the weather continued to be bad. He understood there was a hold on the January 4th deadline. He said he was unable to coordinate the removal effort when Brink changed his mind. Erosion control devices have been added, and the rest of the fill would be removed the following day.

Councilor Lancaster asked Massey when he was first contacted about doing this work.

Massey responded he was contacted about two weeks ago, but he had not been sure of Steinmann's position. He was told to hold off if the weather did not change, and Brink indicated he could provide up to a thirty-day extension.

Ron Steinmann, property owner 12929 SE Rusk Road, said Brink led him to believe that he could get an extension because of the weather and the amount of water in the front yard. That was the reason he delayed removal. When he purchased the property, he knew it would flood, but he had no idea of how often. He took action to protect his property and his tenants. The berm had been about four feet high, but in August 1998 he lowered it to two feet and did some landscaping. When he purchased the property, it was a junkyard, and he spent a lot of money improving both the house and the lot. He thought he was doing the City a favor, but the neighbors told him he could not build the berm because they were afraid they might get flooded. At 1:00 a.m. on Thanksgiving morning, the water was almost to the top of the berm, and, if it had not been there, his house would have flooded. He discussed the detention facility being constructed by Clackamas County off Harmony Road, and Ella Whelan told him that facility would not help his property.

Mayor Tomei asked Steinmann if he had a response to this being unauthorized fill.

Steinmann said he realized that it was unauthorized fill.

Councilor Marshall was curious what had taken place since September at which time Steinmann promised Council he would take care of removing the berm.

Steinmann said he did not want to remove the berm so went through the court proceedings, and then the bad weather started.

Bev Neal, 4119 SE Northridge Drive; owner of the property at 13033 SE Rusk Road. She talked to Steinmann in May 1996, and he was aware that the house was in a flood plain when he purchased the property. She had called the City in December 1996 and told staff about the fill activity. She urged the City Council to go forward because Steinmann was aware of the flooding problem. In her opinion, all of the fill did not go into the berm because it appears as if the entire backyard is higher. She did not have faith in Steinmann's words and hoped the City could recover its expenses.

Judy Bunn, 6690 SE May Street, for Elaine Knapp, Rusk Road resident. Steinmann accesses his property through hers, and she saw no evidence of trucks at 4:00 p.m. this afternoon. Her property is still at the same level as it was, and Steinmann was on her property without permission and had left a mess. She said it appears the berm is still on the King property. She and her mother have been dealing with Steinmann for a long

time, and the situation is stressful to her unwell mother. He went to court and was told he had until January 4 or be fined. She checks the property daily, and not one bit of work has been done. Steinmann was fined by the judge for his actions, and he did not apply for the proper permits. He has gone against all aspects of the law, yet it goes on for years. Neal told him it was a flood plain and showed him pictures, yet Steinmann continues to say he did not know the property flooded in that way. He only went to the property today because he was worried about the fine. She urged the City to follow through. She added that Brink told her Steinmann would likely get an extension.

Steve Berliner, Friends of Mt. Scott and Kellogg Creeks, PO Box 22373, Milwaukie, OR 97269. He supported the staff recommendation. The City needs to be in a position to act quickly before there are serious rains and flooding. Clearly, there would be more damage to Neal's property with the berm in place. If there is a significant flood, the berm and smooth wall face would increase the water velocity and impact Neal's side of the creek. Because the berm was not studied and designed, Steinmann's property will continue to flood. The neighbors should not be made to suffer. He discussed the regional water detention facility and noted that it was designed to detain water from a seven to fifteen year storm event. If there were, for example, a twenty-year flood event, neither Steinmann nor his neighbors would be relieved, and the impact of the berm itself will be unpredictable.

Mayor Tomei felt great sympathy for the residents. A lot of time was spent on this issue in September, and she wanted the situation taken care of as soon as possible.

The motion adopting staff's recommendation passed unanimously among the members present.

Councilor Marshall asked if there were any other avenues the City could follow.

Firestone said, if the berm is not removed, there are code enforcement proceedings that have gone before the judge, and the City would not have to wait ten days to initiate the process. Since the Judge set the date of January 4 for removal, the City could take the position that the remaining fill constitutes a new code violation. He discussed a new notice procedure.

Councilors Lancaster and **Marshall** agreed that the City needs to bring all forces to bear.

Councilor King said an ethical neighbor not only takes care of his or her own property, but also is cognizant of how actions may impact neighbors and the environment.

Johnson Creek Boulevard Phases II & III Agreement with City of Portland

Brink presented the staff report in which the City Council was requested to authorize the City Manager to sign an intergovernmental agreement with the City of Portland for Phases II & III improvements on Johnson Creek Blvd.

This is an ongoing project that began in February 1995 when the Council approved a resolution that endorsed safety improvements on Johnson Creek Boulevard between 36th and 45th Avenues. Project Phase II would design and install 2,060 feet of storm line and a water quality facility. Milwaukie's cost would be about \$60,000 and the City of Portland \$26,000 because 90% of that phase is in the City of Milwaukie. Maintenance responsibilities will be addressed in a subsequent agreement. Phase III has to do with design of roadway improvements and right-of-way acquisition. If approved, construction would take place this summer.

Councilor Marshall asked how this project fit into the big picture that included such proposals as taking the Sellwood Bridge out of service. Who has a concept of what will be taking place with the many regional transportation concerns?

Bartlett said this project began about ten years ago with the Southeast Corridor Study looking for solutions to the existing traffic problems on Johnson Creek Boulevard. A new bridge crossing will likely not be constructed for twenty years, and the storm drainage project will support future improvements.

Brink added that Phase III includes curbs, sidewalks, and bike lanes. This is part of the Regional Transportation Plan, and he felt there was a commitment to continue moving in this direction.

Councilor King asked about resident parking.

Brink said residents wanted bike lanes and did not want travel lanes widened, so parking will be off-street.

It was moved by Councilor Marshall and seconded by Councilor King to authorize the City Manager to sign the intergovernmental agreement with the City of Portland for Phases II & III improvements on Johnson Creek Blvd. Motion passes unanimously among the members present.

Community Development Block Grant Ramp Project

Brink presented the staff report in which the City Council was requested to approve the construction of 76 sidewalk ramps in the City. The cost to the City will be approximately \$17,000 which was about \$4,000 more than anticipated in order to include 6 additional ramps for \$660 each. This would complete improvements to all known unramped pedestrian crossings in the City of Milwaukie.

Councilor King discussed the design of the ramp at 42nd Avenue and Monroe Street.

Brink said the asphalt was added as a transition between a section with sidewalks and one without.

It was moved by Councilor Marshall and seconded by Councilor Lancaster to approve construction of 76 sidewalk ramps under the Community Development Block Grant Ramp Program. Motion passed unanimously among the members present.

Establish City Council Meeting Dates for 1999 -- Resolution

Bartlett presented the staff report. This would typically be a Consent Agenda item, but he sought City Council direction for scheduling meetings in the neighborhoods. Council agreed that the first and third Tuesdays of each month should be at a specific location because some actions have long-term notice requirements. Work sessions would be scheduled in the neighborhoods.

It was moved by Councilor King and seconded by Councilor Lancaster to adopt the Resolution establishing 1999 meeting dates. Motion passed unanimously among the members present.

RESOLUTION NO. 2-1999:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DESIGNATING THE FIRST AND THIRD TUESDAYS OF EACH MONTH AS THE REGULAR CITY COUNCIL MEETING DATE.

INFORMATION

Mayor Tomei announced the Roswell pond planting on Saturday, January 9, 1999.

ADJOURNMENT

It was moved by Councilor Marshall and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously among the members present.

Mayor Tomei adjourned the meeting at 7:50 p.m.

Pat DuVal, Recorder